



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 800 OF 1997
IN THE MATTER OF THE ESTATE OF THE LATE ELIJAH
KARIUKI NDEGWA (DECEASED)

MARY WAIRIMU KARIUKI
APPLICANT/OBJECTOR

VERSES

WASHINGTON MUNGE
RESPONDENT

JUDGEMENT

1. The deceased herein died on 10th August 1986 and the Respondent allegedly together with the Objector applied for letters of administration which were issued on 22nd July 1997 and confirmed on 4th February 2000.
2. The Applicant/Objector filed her application dated 29th March 2023 seeking *inter alia* to have the above grant revoked on the grounds that she was never involved in the entire exercise.

3. The Respondent filed his replying affidavit sworn 29th June 2023 denying the Applicant's averments and stated that all along she was in the picture and they agreed that they will share the estate equally.
4. When the matter came up for directions the court found it fit to have the same heard by way of oral evidence.
5. Both the Applicant/Objector and the Respondent testified and did not call any witnesses.
6. The Objector told the court that her late father died leaving behind three daughters who included herself, Rebecca Njoki and Lucia Wanjiku Ndegwa. That the Respondent was her cousin for the fact that the deceased and his father were brothers.
7. She denied that she was ever involved in this cause and that she got to learn of it when the transfer documents in respect to land parcel number 75/719 Thindigua were brought for her signature by the Respondent. She said that the said parcel of land measuring $\frac{3}{4}$ of an acre has been her home as she was never married.
8. She therefore prayed that the grant be revoked and or the name of the Respondent be expunged as an Administrator.
9. On his part the Respondent denied that the Objector was never in the know as they signed all the pleadings before the advocate and that they agreed to share the estate equally.

10. He relied on the Chief's letter which introduced him as the son to the deceased though he admitted that he was his uncle. He nevertheless acknowledged him as his son.
11. He further testified that they had already disposed part of the estate and shared with the Objector the proceeds.
12. The court directed the parties to file written submissions which they complied. The court has perused the same as well as the cited authorities.
13. The Objector strongly submitted that the grant was obtained by fraud and while relying on the provisions of Section 29 of the Succession Act stated that the Respondent did not fit the bill.
14. She submitted that the Chief's letter was obtained fraudulently and could not be relied on as a piece of genuine and admissible evidence.
15. She accused the Respondent of intermeddling in the estate and forging her signature which was not hers as she doesn't know how to write but she thumbprints.
16. On his part the Respondent denied the Applicant's allegations and submitted that she was in the know all through and in fact they both appeared before an advocate who was now deceased and signed the pleadings herein and how to share out the estate equally.
17. He also raised an objection that the application had been filed by an incompetent person and therefore the same ought to be revoked.

18. On the dependant question he relied on the provisions of Section 3(2) of the Succession Act and submitted that by all intent and purposes he was the deceased child and had in fact recognised him as such.

ANALYSIS AND DETERMINATION

19. The issues herein are not very difficult to appreciate. The main question is whether the Respondent who in his evidence confirmed that the deceased was his uncle is entitled to apply to succeed the deceased estate in light of the fact that his three children are still alive and available.

20. The deceased left behind three children including the Applicant and from the record it appears that the Respondent colluded, for lack of better word, to inherit the estate equally. That process was completed when the grant was confirmed.

21. The Objector has now turned around and denied that she was aware of the proceedings. She relied on the fact that she was illiterate and did not therefore sign the pleadings and that she never attended any court proceedings.

22. Secondly that the Respondent made her aware of these proceedings when he brought the transfer documents for her signature.

23. On the other hand, the Respondent did not deny the fact that the deceased was his uncle but had recognised him as his child and produced the Chief's letter to support this fact.

24. The first part of entry is Section 29 of the Act as clearly submitted by the parties. The said Act clearly indicates who are the dependants. It goes on to state as follows;

“For the purposes of this Part, "dependant" means

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(a)the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;”

25. In view of the above provisions, it is clear that the Objector and her two sisters have priority over the Respondent. The Respondent would come in later once it is established that there were no other direct dependants of the deceased.

26. Relying on the Chief’s letter alone is insufficient. What a Chief ordinarily writes is what he is told to but courts only require such purely for administrative purposes. They cannot be taken as solid evidence to show the relationship between the deceased and the would-be applicant.

27. In any case the said Chief was not called to testify which in my view would not have changed much.

28. What I find germane as well is the contention by the Objector that she does not know how to write and that she only thumbprints. I have perused the affidavit dated 8th November 1999 and clearly on a “naked eye” it appears it was written/signed by the same person and it was not thumb-printed.

29. The same goes with the consent for confirmation of grant dated 8th November 1999 signed allegedly by the Objector as well as Rebecca Njoki Kariuki.
30. It is on record that the Respondent testified that they did not attend court during confirmation of the grant but instead the grant was simply brought to them by their lawyer who has since passed on.
31. If this is true as I cannot see their presence in the courts record on the material day, then, it was an infraction. They ought as a matter of necessity to have availed themselves to the court and their presence recorded.
32. In my findings therefore I hold that the Respondent had no locus to apply for the grant in this estate without the consent of all the deceased children. Even though it appears that they agreed to share the estate equally with the Objector I do not find any concurrence by the Objector and her sisters.
33. If indeed the deceased wanted him to inherit the estate together with his children, then he would have expressed so by way of oral or written Will. No such evidence was adduced by the Respondent.
34. As to whether they have sold and shared out part of the estate with the Objector the same shall remain so if indeed there was such a transaction for the reasons stated above and in any case the purchaser has a recourse in demanding the purchase consideration from the two of them.

35. There was also a line of submissions by the Respondent that it had taken over twenty years for this objection to be brought and therefore the applicant was guilty of *laches*.
36. Whereas this could be true the circumstances however do not favour him. The Applicant has all along been on the said property and there was nothing to suggest that she was facing any imminent danger of it being alienated by a third party till the Objector appeared in the scene.
37. She testified that she only got to learn of the cause when she was brought some transfer documents for the parcel of land.
38. This being the case I find that the Applicant had a legitimate right in bringing this objection proceedings.
39. Finally, I do not find the argument that the cause was filed by unqualified person plausible. This cause has come this far and even if for a moment that was the case, the overriding principles of substantive justice would take precedent over procedural technicalities.
40. The Respondent's application of 8th June 2023 which was seeking to compel the Objector sign or execute the transfer documents in respect to land parcel number 76/163 is moot for now for the reasons stated above.
41. **For the reasons stated above this court finds and directs that:-**
- (a) The grant issued on 22nd July 1997 and confirmed on 4th February 2000 is hereby**

revoked and fresh grant issued to Mary Wairimu Kariuki for and on behalf of the estate of the late Elijah Kariuki Ndegwa.

- (b) The Respondent Washington Munge is not a dependant of the estate herein.**
- (c) The application dated 8th June 2023 by the Respondent is disallowed.**
- (d) Each party shall meet their on costs.**

**Dated signed and delivered at Nairobi via video link
this 19th day of March 2026.**

**H K CHEMITEI
JUDGE**